

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA

Forrest Kelly Samples, #185092,)	Civil Action No.: 1:12-2472-MGL
)	
Plaintiff,)	
)	
vs.)	ORDER AND OPINION
)	
SCEC; Lee CI Investigator Greer; Lee CI)	
Head of Contraband Capt. Stonebreaker,)	
)	
Defendants.)	
_____)	

Pro se Plaintiff Forrest Kelly Samples (“Plaintiff”), a state prisoner currently housed at the Perry Correctional Institution of the South Carolina Department of Corrections in Pelzer, South Carolina, brings this action pursuant to 42 U.S.C. § 1983. In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 D.S.C., this matter was referred to United States Magistrate Judge Shiva V. Hodges for pretrial handling. On January 1, 2013, Magistrate Judge Hodges issued a Report and Recommendation recommending *inter alia* that the court dismiss Defendant South Carolina Department of Corrections from this case without prejudice and without issuance and service of process because of its Eleventh Amendment immunity. (ECF No. 19.)

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). The court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. *Id.* The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made.

Plaintiff was advised of his right to file objections to the Report and Recommendation. (ECF No. 19 at 6.) Plaintiff has filed no objections and the time for doing so expired on January 28, 2013. In the absence of a timely filed objection, a district court need not conduct a *de novo* review, but

instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge’s recommendation to be proper. Accordingly, the Report and Recommendation is incorporated herein by reference and this action is DISMISSED without prejudice and without issuance and service of process as to Defendant South Carolina Department of Corrections.

IT IS SO ORDERED.

s/Mary G. Lewis
United States District Judge

January 31, 2013
Spartanburg, South Carolina